

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEADERSHIP STUDIES, INC., dba
CENTER FOR LEADERSHIP
STUDIES, a California corporation,

Plaintiff,

v.

BLANCHARD TRAINING AND
DEVELOPMENT, INC., a California
corporation, and Does 1-10, inclusive,

Defendant.

CASE NO. 15cv1831-WQH-KSC

ORDER

HAYES, Judge:

The matter before the Court is the Motion to Amend/Correct Second Amended Complaint and File Third Amended Complaint (ECF No. 44) filed by Plaintiff Leadership Studies, Inc. (“Plaintiff”).

I. Background

On August 17, 2015, Plaintiff Leadership Studies commenced this action by filing the Complaint. (ECF No. 1). On November 9, 2015, Plaintiff filed the First Amended Complaint. (ECF No. 10). On March 4, 2016, the Court granted Defendant Blanchard Training and Development, Inc.’s (“Defendant’s”) Partial Motion to Dismiss without prejudice. On April 13, 2016, Plaintiff filed the Second Amended Complaint. (ECF No. 27). On April 27, 2016, Defendant filed the Answer to the Second Amended

1 Complaint and included a counterclaim and affirmative defenses. (ECF No. 28).¹ On
 2 August 29, 2016, Plaintiff filed the Motion to Amend/Correct the Second Amended
 3 Complaint and File Third Amended Complaint. (ECF No. 44). On September 12,
 4 2016, Defendant filed a response. (ECF No. 45). On September 19, 2016, Plaintiff
 5 filed a reply. (ECF No. 46).

6 **II. Discussion**

7 Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given
 8 when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with
 9 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th
 10 Cir. 2003) (quotation omitted). In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme
 11 Court offered several factors for district courts to consider in deciding whether to grant
 12 a motion to amend under Rule 15(a):

13 In the absence of any apparent or declared reason—such as undue delay,
 14 bad faith or dilatory motive on the part of the movant, repeated failure to
 15 cure deficiencies by amendments previously allowed, undue prejudice to
 the opposing party by virtue of allowance of the amendment, futility of
 amendment, etc.—the leave sought should, as the rules require, be “freely
 given.”

16 *Foman*, 371 U.S. at 182; *see also Smith v. Pac. Prop. Dev. Co.*, 358 F.3d 1097, 1101
 17 (9th Cir. 2004). “Not all of the [*Foman*] factors merit equal weight. As this circuit and
 18 others have held, it is the consideration of prejudice to the opposing party that carries
 19 the greatest weight.” *Eminence Capital*, 316 F.3d at 1052 (citations omitted). “The
 20 party opposing amendment bears the burden of showing prejudice.” *DCD Programs,*
 21 *Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). “Absent prejudice, or a strong
 22 showing of any of the remaining *Foman* factors, there exists a presumption under Rule
 23 15(a) in favor of granting leave to amend.” *Eminence Capital*, 316 F.3d at 1052.

24 After review of the Motion to Amend/Correct the Second Amended Complaint
 25


26
 27 ¹ On May 23, 2016, Plaintiff filed a Motion to Dismiss the counterclaim and
 28 various affirmative defenses. (ECF No. 30). Defendant filed a response on June 21,
 2016. (ECF No. 34). Plaintiff filed a reply on June 28, 2016. (ECF No. 36). The
 Motion to Dismiss the counterclaim and affirmative defenses has been fully plead and
 is before the Court. This Order does not address Plaintiff’s Motion to Dismiss.

1 and File Third Amended Complaint and all related filings, the Court concludes that
2 Defendant has not made a sufficiently strong showing of the *Foman* factors to
3 overcome the presumption of Rule 15(a) in favor of granting leave to amend. *See*
4 *Eminence Capital*, 316 F.3d at 1052.

5 **III. Conclusion**

6 IT IS HEREBY ORDERED that the Motion to Amend/Correct Second Amended
7 Complaint and File Third Amended Complaint (ECF No. 44) is GRANTED. Plaintiff
8 shall file the proposed third amended complaint attached to the motion (ECF No. 44-3)
9 **within ten (10) days** from the date of this order.

10 DATED: October 27, 2016

11 
12 **WILLIAM Q. HAYES**
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28